

531 Rec'd PCT/PTO 24 JUN 2002

Attorney Docket No. 39573.830003.004  
Express Mail Label No. EL892059749US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

ALLAIRE, et al.

U.S. Serial No. 09/673,922 ✓

U.S. Filing Date: 20 October 2000

(A National Filing from PCT/US99/08870

Int. Filing Date: April 22, 1999

Priority Date: 22 April 1998

WO/99/5397

Int. Publication Date 28 October 1999

For: HYBRID MAGNETICALLY SUSPENDED AND  
ROTATED CENTRIFUGAL PUMPING  
APPARATUS AND METHOD

CERTIFICATE OF MAILING BY EXPRESS MAIL

Assistant Commissioner for Patents  
Washington, D.C. 20231

Sir:

The undersigned hereby certifies:


1. Petition Under 37 C.F.R. § 1.18;
2. Exhibit 1—Response to Decision on Request;
3. Exhibit 2—Notice of Abandonment;
4. Return Card,

and this Certificate of Mailing by Express Mail relating to the above application, were deposited as "Express Mail," Mailing Label No. EL892059749US with the United States Postal Service, addressed to Box PATENT APPLICATION, Assistant Commissioner for Patents, Washington, D.C., 20231, on this 24<sup>th</sup> day of June, 2002.

June 24, 2002

  
Mailer

June 24, 2002

  
Brian P. Kinneer, Reg. No. 43,717  
HOLLAND & HART LLP  
555 17th Street, Suite 3200  
Denver, Colorado 80201-8749  
Telephone: (303) 295-8170  
Facsimile: (303) 295-8265

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

ALLAIRE et al.

U.S. Serial No. 09/673922  
U.S. filing date: 20 October 2000

(A National filing from PCT/US99/08870  
Int. filing date: 22 April 1999  
Priority date: 22 April 1998  
WO 99/53974  
Int. Publication date 28 October 1999)

For: HYBRID MAGNETICALLY  
SUSPENDED AND ROTATED  
CENTRIFUGAL PUMPING  
APPARATUS AND METHOD

PETITION UNDER 37 C.F.R. § 1.181(a))

Box PCT  
Assistant Commissioner of Patents  
Washington, D.C. 20231

Sir:

Applicants hereby petition to withdraw the holding of abandonment mailed June 6, 2002, based on the following facts:

- The present application was filed as a National Stage Application in the United States on October 20, 2000.
- On November 8, 2000, the United States Patent Office mailed a Notification of Missing Requirements Under 35 U.S.C. § 371 stating the Oath or Declaration did not list all inventors.
- On December 8, 2000, and in response to the Notification of Missing Requirements, the attorney for the applicants filed Petitions under 37 C.F.R. §§ 1.183 and 1.48(a) requesting waiver of certain rules.

- In response to the December 8, 2000 Petitions, the United States Patent Office mailed a Decision on Request on February 21, 2001. In the Decision, the Patent Office Dismissed the Petitions because, in part, the attorney for applicants had not exhausted other remedies. A two month time frame, with possible extension under 37 C.F.R. §1.136(a), was designated for a response to be filed.
- On August 21, 2001, with a request for a four month extension of time, the attorney for the applicants filed response to the Decision of Request. Part of the response requested waive of signature by Mr. Baloh. Mr. Baloh's declaration and signature was filed in a supplemental response on August 24.
- On November 27, 2001, the United States Patent Office rejected the declarations filed as part of the August 21, 2001 Response, as containing conflicting statements. The Petition to request the waiver of Mr. Baloh's signature was dismissed as moot in light of the supplemental response containing Mr. Baloh's signature. The November 27, 2001, Decision set a two month time frame, with extensions under 37 C.F.R. § 1.136(a), to reply.
- On January 17, 2002, after a telephonic discussion with the PCT legal desk, the attorney for applicants submitted supplemental declarations clarifying the "conflicting statements" noted in the November 27, 2001, response. The January 17, 2002 filing is attached to this petition as Exhibit 1 containing a copy of:
  - The Certification of Mailing by Express Mail;
  - The Response to Decision on Request Mailed November 27, 2001;
  - Supplemental Declaration of Jeffrey Decker;
  - Supplemental Declaration of Michael Baloh;
  - The November 27, 2001 Decision of Request;
  - The Stamped Post Card indicating the mailing was received by the Patent Office on January 17, 2002; and
  - The Express Mail Receipt indicating the Post Office received the mailing on January 17, 2002.
- The attorney for applicants and the applicants received no further communication regarding this case until a Notification of Abandonment was received, a copy of the Notification of Abandonment is attached as

exhibit 2. The Notification of Abandonment was mailed on June 10, 2002.

- As the attorney for applicants and applicants have not received communication on the January 17, 2002 filing, it is believed the Notification of Abandonment should be withdrawn.

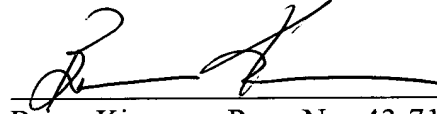
Based on the above facts, the applicants and their attorney respectfully request the withdrawal of the finding of abandonment, acceptance of the filed declarations, and prosecution of the patent application on the merits.

No fee is believed to be due for this petition, however, if a fee is due, please charge Deposit Account No. 08-2623 for any additional fees that may be required for consideration of this petition. One additional copy of this petition, without attachments, is attached.

If anyone in the U.S. Patent and Trademark Office wishes to discuss any aspect of this petition, they should call the undersigned attorney at 303-295-8170.

Signed at Denver, Colorado, this 24 day of June 2002.

Respectfully submitted,



Brian Kinnear, Reg. No. 43,717  
Holland & Hart LLP  
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P.O. Box 8749  
Denver, Colorado 80401-9749  
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Facsimile: (303) 295-8261

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

ALLAIRE, et al.

Examiner:

U.S. Serial No. 09/673,922

Art Unit:

U.S. filing date: 20 October 2000

(A National filing from PCT/US99/08870

Int. filing date: 22 April 1999

Priority date: 22 April 1998

WO 99/53974

Int. Publication date 28 October 1999)

CERTIFICATE OF MAILING BY EXPRESS MAIL

Box PCT  
Assistant Commissioner for Patents  
Washington, D.C. 20231

Sir:

The undersigned hereby certifies that the enclosed:


1. Response to Decision on Request Mailed November 27, 2001;
2. Supplemental Declaration of Jeffrey Decker;
3. Supplemental Declaration of Michael Baloh
4. Copy of the U.S. Patent Office's Decision on Request; and
5. Return Card.

relating to the above application, were deposited as "Express Mail," Mailing Label No. EL379001238US with the United States Postal Service, addressed to Assistant Commissioner for Patents, Box PCT, Washington, D.C., 20231, on this January 17, 2002.

January 17, 2002

  
\_\_\_\_\_  
Mailer

January 17, 2002

  
\_\_\_\_\_  
Brian P. Kinnear, Reg. No. 43,717  
HOLLAND & HART LLP  
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Telephone: (303) 295-8170  
Facsimile: (303) 295-8261



26582

PATENT TRADEMARK OFFICE

PATENT

Attorney Docket No. 39573.830003.004

Express Mail No. EL379001238US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

ALLAIRE, et al.

Examiner:

U.S. Serial No. 09/673,922

Art Unit:

U.S. filing date: 20 October 2000

(A National filing from PCT/US99/08870

Int. filing date: 22 April 1999

Priority date: 22 April 1998

WO 99/53974

Int. Publication date 28 October 1999)

RESPONSE TO DECISION ON REQUEST MAILED NOVEMBER 27, 2001

Box PCT

Assistant Commissioner for Patents

Washington, D.C. 20231

Sir:

On August 21, 2001, the Applicants, by and through their agent, filed a series of petitions and declarations to correctly identify the inventive entity relating to the above referenced application. On November 27, 2001, the Patent Office dismissed the request without prejudice because of the following seemingly inconsistent statements:

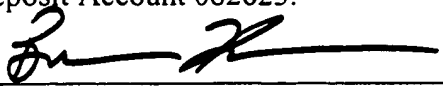
[A]pplicants filed declarations by Michael Baloh and Jeffrey Decker which state, "I am a co-inventor of the subject matter claimed in application no. 09/673,992." However, the declarations by Michael Baloh and Jeffrey Decker also state that, "[t]hrough error, which error was made under a condition of time-urgency, and without deceptive intent, I was named as an inventor on United States Patent Application 09/673,922, but did not submit a corresponding declaration."

In light of the seemingly inconsistent statements, the Patent Office required Michael Baloh and Jeffrey Decker to submit new declarations clarifying whether they were properly named as inventors or not. Therefore, submitted herewith are supplemental declarations from Michael Baloh and Jeffrey Decker clarifying that they are inventors of the above reference application. Further, they clarify that the error made without deceptive intent on their part is that a "Combined Declaration and Power of Attorney for Patent Application" with their names and signatures was not submitted, which proper Combined Declaration and Power of Attorney for Patent Application was submitted on August 21, 2001, and August 24, 2001.

Based on the Supplemental Declarations and the above, it is respectfully requested that the Patent Office reconsider the Petition filed on August 21, 2001, which was supplemented on August 24, 2001, and grant the Applicants' petition.

If any fee not otherwise accounted for, including any fee for an extension of time, is required, please charge any such fee to Deposit Account 082623.

January 17, 2002



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Brian P. Kinnear, Reg. No. 43,717  
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Post Office Box 8749  
Denver, Colorado 80201  
Telephone: (303) 295-8170  
Facsimile: (303) 295-8261

In re U.S. Application of: )  
 )  
ALLAIRE et al. )  
 ) Examiner:  
U.S. Serial No.: 09/673,992 )  
U.S. filing date: 20 October 2000 )  
 ) Art Unit:  
(A National filing from PCT/US99/08870 )  
Int. filing Date: 22 April 1999 )  
Priority data: 09/064,352; 22 April 1998 )  
WO 99/53974 )  
Int. Publication date 28 October 1999) )  
 )  
For: HYBRID MAGNETICALLY )  
SUSPENDED AND ROTATED )  
CENTRIFUGAL PUMPING APPARATUS )  
AND METHOD )

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SUPPLEMENTAL DECLARATION OF JEFFREY DECKER

I, Jeffrey Decker, declare as follows:

1. Application PCT/US99/08870, which designated the United States, was filed on April 22, 1999.
2. I am designated as an applicant and as an inventor in Application PCT/US99/08870.
3. United States Patent Application 09/673,922 was filed on April 22, 2000 as a national filing out of Application PCT/US99/08870.
4. I am correctly named as an inventor on United States Patent Application 09/673,922.



5. Through error, which error was made under a condition of time-urgency, and without deceptive intent, a declaration was submitted without my signature.
6. I have read and I understand United States Patent Application 09/673,922, including the subject matter claimed therein.
7. I am a co-inventor of the subject matter claimed in United States Patent Application 09/673,922.
8. I submitted a proper declaration on August 24, 2001.
9. In a declaration submitted on August 24, 2001, I stated the following:  
  
[t]hrough error, which error was made under a condition of time-urgency, and without deceptive intent, I was named as an inventor on United States Patent Application 09/673,922, but did not submit a corresponding declaration.

As clarified by the above supplemental declaration, by this statement, I intended to signify that I was properly named as inventor on the application and the error was that a declaration from me was not submitted.

1/7/02  
Date

Jeffrey Decker  
Jeffrey Decker

In re U.S. Application of: )  
 )  
ALLAIRE et al. )  
 ) Examiner:  
U.S. Serial No.: 09/673,992 )  
U.S. filing date: 20 October 2000 )  
 ) Art Unit:  
(A National filing from PCT/US99/08870 )  
Int. filing Date: 22 April 1999 )  
Priority data: 09/064,352; 22 April 1998 )  
WO 99/53974 )  
Int. Publication date 28 October 1999) )  
 )  
For: HYBRID MAGNETICALLY )  
SUSPENDED AND ROTATED )  
CENTRIFUGAL PUMPING APPARATUS )  
AND METHOD )

---

SUPPLEMENTAL DECLARATION OF MICHAEL BALOH

I, Michael Baloh, declare as follows:

1. Application PCT/US99/08870, which designated the United States, was filed on April 22, 1999.
2. I am designated as an applicant and as an inventor in Application PCT/US99/08870.
3. United States Patent Application 09/673,922 was filed on April 22, 2000 as a national filing out of Application PCT/US99/08870.
4. I am correctly named as an inventor on United States Patent Application 09/673,922.

5. Through error, which error was made under a condition of time-urgency, and without deceptive intent, a declaration was submitted without my signature.
6. I have read and I understand United States Patent Application 09/673,922, including the subject matter claimed therein.
7. I am a co-inventor of the subject matter claimed in United States Patent Application 09/673,922.
8. I submitted a proper declaration on August 24, 2001.
9. In a declaration submitted on August 24, 2001, I stated the following:

[t]hrough error, which error was made under a condition of time-urgency, and without deceptive intent, I was named as an inventor on United States Patent Application 09/673,922, but did not submit a corresponding declaration.

As clarified by the above supplemental declaration, by this statement, I intended to signify that I was properly named as inventor on the application and the error was that a declaration from me was not submitted.

26/12/01  
Date

  
Michael Baloh

NOV 27 2001



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C. 20231  
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Denver, Colorado 80201-8749

12-5-01  
MC  
1-27-02

In re Application of  
ALLAIRE et al.  
Application No.: 09/673,922  
PCT No.: PCT/US99/08870  
Int. Filing Date: 22 April 1999  
Priority Date: 22 April 1998  
Attorney Docket No.: 39573.830003  
For: HYBRID MAGNETICALLY  
SUSPENDED AND ROTATED  
CENTRIFUGAL PUMPING APPARATUS  
AND METHOD

DECISION ON REQUEST

This decision is in response to applicants' "Renewed Petition Under 37 CFR 1.48(a)" and "Petition Under 37 CFR 1.47(a)" filed 21 August 2001 and "Supplemental Response to the Decision to Request" filed 24 August 2001.

### BACKGROUND

On 22 April 1999, applicants filed international application No. PCT/US99/08870 which claimed a priority date of 22 April 1998 and designated the United States. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 28 October 1999. The international application named Paul Allaire, Gill Bearnson, Ron Flack, Don B. Olsen, James W. Long, B. Ajit Kimar, Pratap S. Khanwilkar, Jeffrey Decker, and Michael Baloh as inventors. A Demand for international preliminary examination was filed prior to 19 months from the priority date. Accordingly, the thirty-month period for paying the basic national fee expired at midnight on 22 October 2000.

On 20 October 2000, applicants filed a transmittal letter for entry into the national stage accompanied by, *inter alia*: the requisite basic national fee; a copy of the international application; and an oath and declaration.

On 08 November 2000, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) and Notification of a Defective Oath or Declaration (Form PCT/DO/EO/917) indicating that the declaration filed 20 October 2000 was defective because inventors Jeffrey Decker and Michael Baloh names and signatures were missing from the declaration. Additionally, the declaration was executed by M. Mary Sinnot, who has not been named in the international application. The

notification set a one month time limit in which to respond.

On 08 December 2000, applicants filed "Petition to Correct Inventorship under 37 CFR 1.48(a);" "Petition Under 37 CFR 1.183 for Waiver of Assignee Consent"; and "Petition Under 37 CFR 1.183 for Waiver of a New Oath." In a decision dated 21 February 2001, applicants' petitions were dismissed without prejudice.

On 21 August 2001, applicant filed "Renewed Petition Under 37 CFR 1.48(a)" and "Petition Under 37 CFR 1.47(a)."

On 24 August 2001, applicant filed "Supplemental Response to the Decision to Request" which included an executed declaration of non-signing inventor, Michael Baloh.

### DISCUSSION

#### **A. Submission Under 37 CFR 1.497(d)**

In the instant case, the international application named Paul Allaire, Gill Bearnson, Ron Flack, Don B. Olsen, James W. Long, B. Ajit Kimar; Pratap S. Khanwilkar, Jeffrey Decker, and Michael Baloh as inventors. In a decision dated 21 February 2001, applicants request to delete Michael Baloh and Jeffrey Decker as inventors and add M. Mary Sinnot as an inventor was dismissed without prejudice. In response to the Decision, Mary Sinnot has declared that, "I am not a co-inventor of the subject matter claimed in application no. 09/673,922. Additionally, applicants filed declarations by Michael Baloh and Jeffrey Decker which state, "I am a co-inventor of the subject matter claimed in application no. 09/673,922." However, the declarations by Michael Baloh and Jeffrey Decker also state that, "[t]hrough error, which error was made under a condition of time-urgency, and without deceptive intent, I was named as an inventor on United States Patent Application 09/673,922, but did not submit a corresponding declaration." Due to the contradiction in the above statements, it is unclear whether Michael Baloh and Jeffrey Decker are inventors of the above-identified application and further clarification is needed from Michael Baloh and Jeffery Decker. Therefore, applicants' request under 37 CFR 1.497(d) is dismissed.

#### **B. Petition Under 37 CFR 1.47(a)**

The petition for status under 37 CFR 1.47(a) filed 21 August 2001 is moot since the declaration filed 24 August 2001 was executed by the named inventor, the previous non-signing inventor, Michael Baloh.

### CONCLUSION

For the reasons discussed above, applicants' request under 37 CFR 1.497(d) is **DISMISSED** without prejudice.

For the reasons discussed above, applicants' request under 37 CFR 1.47 is **DISMISSED** as **MOOT**.

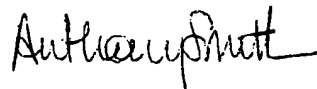
A proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time may be obtained under 37 CFR 1.136(a).

A proper response must include a statement from inventors Baloh and Decker which clarifies their earlier contradictory statements and clearly sets forth their status in the present application.

Please direct further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the PCT Legal Office.



Richard Cole  
PCT Legal Examiner  
PCT Legal Office



Anthony Smith  
Attorney-Advisor  
PCT Legal Office  
Tel: (703) 308-6314  
Fax: (703) 308-6459

RECEIVED ON DATE STAMP BELOW:

Attorney Docket No. 39573.83000004

Applicant: ALLAIRE, et al. Filed: October 20, 2000

For: HYBRID MAGNETICALLY SUSPENDED AND ROTATED CENTRIFUGAL PUMPING APPRATUS AND METHOD

1. Response to Decision on Request Mailed November 27, 2001;
2. Supplemental Declaration of Jeffrey Decker;
3. Supplemental Declaration of Michael Baloh
4. Copy of the U.S. Patent Office's Decision on Request; and
5. Return Card.

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Date Mailed: January 17, 2002

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 Washington, D.C. 20231  
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U.S. APPLICATION NUMBER NO. 09/673,922	FIRST NAMED APPLICANT Allaire et al	ATTY. DOCKET NO. 39573.830003.001
		INTERNATIONAL APPLICATION NO. PCT/US99/08870
		IA. FILING DATE 04/22/1999
		PRIORITY DATE

Patrick McBride  
 Holland & Hart  
 Suite 3200  
 555 Seventeenth Street  
 Denver, CO 80201-3979

CONFIRMATION NO. 7091

371  
 ABANDONMENT/TERMINATION  
 LETTER

\*OC000000008256384\*

Date Mailed: 06/10/2002

**NOTIFICATION OF ABANDONMENT**

The United States Patent and Trademark Office in its capacity as a Designated Office (37 CFR 1.494), has made the following determination:

- PER PETITION DECISION 11/27/01

Therefore, the above identified application failed to meet the requirements of 35 U.S.C. 371 and 37 CFR 1.494, and is ABANDONED AS TO THE UNITED STATES OF AMERICA.

VONDA M WALLACE

Telephone: (703) 305-3736

PART 1 - ATTORNEY/APPLICANT COPY

FORM PCT/DO/EO/909 (371 Abandonment Notice)

**RECEIVED**

JUN 21 2002

Holland &amp; Hart LLP